

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT W. TSCHUDIN,)	
)	
Plaintiff,)	
)	
v.)	No. 4:05-CV-789-RWS
)	
BUREAU OF ALCOHOL, TOBACCO,)	
and FIREARMS, et al.,)	
)	
Defendants.)	

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Robert W. Tschudin for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a).

The Court notes that plaintiff has submitted a motion to proceed in forma pauperis [Doc. #1]; however, the accompanying Form CJA 23-Financial Affidavit [Doc. #2] is entirely blank. As such, the Court will deny plaintiff leave to proceed in forma pauperis in this action. Moreover, the Court will not grant plaintiff time in which to pay the filing fee, because the complaint suffers from several defects.

First, plaintiff has named the Bureau of Alcohol, Tobacco, and Firearms ("ATF") and the United States of America as defendants in the caption of the complaint but, on page two, he includes "Daina Nichols & part of apx. 50 persons full, riot gear, weapons, shields." Rule 10(a) of the Federal Rules of Civil

Procedure requires that the caption of the complaint include the names of all the parties. Second, plaintiff has failed to allege any facts whatsoever in the "Statement of Claim" on page three of the complaint. Rather than briefly setting forth the facts against each named defendant, plaintiff has attached to his complaint a three-page, redacted document that appears to concern a 1992 ATF investigation. The facts recounted in this attachment do not state a claim under any cognizable legal theory. Although the Court is to give plaintiff's complaint the benefit of a liberal construction, the Court will not create facts or claims that have not been alleged. Third, plaintiff does not set forth a demand for relief. See Fed.R.Civ.P. 8(a). Last, plaintiff has failed to sign the complaint. See Fed.R.Civ.P. 10(a).

Therefore,

IT IS HEREBY ORDERED that plaintiff is **DENIED** leave to commence this action without the payment of the statutory filing fee [Doc. #1].

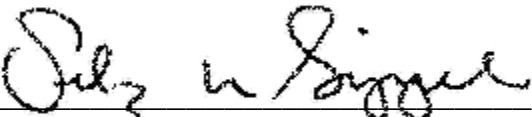
IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. #4] is **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and/or fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2).

An appropriate order shall accompany this order and

memorandum.

Dated this 30th day of June, 2005.


UNITED STATES DISTRICT JUDGE